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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

WILLIAM MANN, ALEX ROJAS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ABC SIGNATURE, LLC, a Delaware
Limited Liability Company;
TWENTIETH CENTURY FOX FILM
CORPORATION, a Delaware
Corporation; JAMES M. KAPENSTEIN,
an individual,

Defendants.

Case No: 2:22-cv-06628-SSS-KKx
Assigned to Hon. Sunshine S. Sykes

(Removed from Los Angeles Superior
Court, Case No. 22STCV08620)

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION**

Date: October 27, 2023
Time: 2:00 p.m.
Ctmm: 2, Second Floor
3470 Twelfth Street
Riverside, CA 92501

Action Filed: March 9, 2022
Removed: September 15, 2022

TO ALL PARTIES AND THEIR COUNSEL OF RECORD: PLEASE TAKE NOTICE that, on October 27, 2023, at 2:00 p.m., in Courtroom 2 of the above-captioned Court located Riverside, California, or on such other date and time as the Court may designate, the Honorable Sunshine S. Sykes presiding, Plaintiffs William Mann (“Mann”) and Alex Rojas (“Rojas”) will move for an order granting preliminary approval of a class-wide compromise reached in the above-captioned action, as well as for conditional certification, for settlement purposes only, of the Settlement Class defined in the Stipulation of Settlement and Release (the “Settlement”). The Settlement is attached as Exhibit 1 to the Declaration of Alan Harris in Support of the Motion for Preliminary Approval.¹ The non-reversionary Settlement provides for a gross fund of \$4,800,000 to be distributed to no more than some 34,640 persons, resulting in a minimum average \$138.57 gross payment to each person ($=\$4,800,000 / 34,640$ Class Members). To the extent this Motion is granted prior to the date on which the total of Class Members reaches 34,640 persons, the average per person recovery will increase. Settlement ¶ 4.

For purposes of identification of Class Members and allocation of the settlement proceeds, the Class Members have been divided into two cohorts: from (1) February 10, 2018, for any Class Member formerly or currently employed by TCFFC, and (2) March 9, 2018, for any Class Member formerly or currently employed by ABCSL. Settlement at ¶ 4. The cut-off date for determining who is in the settlement class is the earlier of the date of preliminary court approval of the Settlement Agreement or the date on which the number of unique individual Class Members exceeds 34,640. The claims at issue in the case are for violation of the Fair Labor Standards Act (the “FLSA”), the California Business & Professions Code, and the following provisions of the California Labor Code

¹ The Motion is intended to ultimately result in the settlement and dismissal of the class and representative actions entitled “*Alex Rojas, individually, and on behalf of all others similarly situated, Plaintiffs vs. Twentieth Century Fox Film Corporation, a Delaware Corporation, Defendants,*” Case No. 2:23-CV-02652-SSS (KKx) (the “Rojas Lawsuit”), and “*William Mann, individually and on behalf of all others similarly situated, Plaintiff v. ABC Signature, LLC, a Delaware Limited Liability Company; and DOE 1 through and including DOE 10; and DOES 1 to 50,*” Case No. 2:22-cv-06628-SSS (KKx) (the “Mann Lawsuit”), both pending before the United States District Court for the Central District of California. On June 7, 2023, the parties filed a stipulation to the filing a Second Amended Complaint (the “SAC”), which adds Rojas as an additional plaintiff in the first-filed Mann Lawsuit.

(the “Code”): (1) §§ 201.3, 201.5, and 203 Continuing Wages; (2) § 226(a), Failure to Provide Compliant Wage Statements; (3) §§ 226.7, 512 and Wage Order No. 12, Failure to Provide Meal Breaks; § 226.7 and Wage Order No. 12, Failure to Provide Rest Breaks; (4) § 510, 515, and 1194 Failure to Provide Pay Proper Overtime; (5) §§ 1194 and 1198 Failure to Provide Pay Proper Minimum Wages; (6) Code § 2802, Failure to Reimburse Business Expenses, including cell phone expenses; and (7) §§ 2698, *et seq.*, Civil Penalties under the Private Attorney Generals Act of 2004 (“PAGA”).

Since up to 34,640 workers are eligible to recover, the gross settlement fund represents a possible recovery of slightly over \$138.57 for each worker, assuming that the Class is that large and there are no opt outs. Here, the settlement proceeds will be allocated among the various workers so that Class Members will receive appropriate payments based on the alleged harm they suffered. For instance, if a Class Member worked for both TCFFC and ABCSL they will receive a credit for having worked for each. The parties have agreed to terms for notice to the class and collective action members, as well as notice to government entities under 28 U.S.C. § 1715; a PAGA payment that is \$100,000); payment of fees to counsel in an amount not to exceed \$1,600,000; reimbursement of counsel’s costs in an amount not to exceed \$35,000; payment of enhancement awards to the class representatives, not to exceed \$5,000 each to Mann and Rojas (collectively, “Plaintiffs”)³; and settlement administration fees, capped at \$145,000.

By way of this Motion, Plaintiffs seek an order for: (1) preliminary approval of the proposed settlement, including terms establishing a procedure for class members to submit claims, and/or consent to participate in the collective action proceeds, as well as to object or opt-out; (2) preliminary certification of the proposed class and subclasses for settlement purposes only; (3) preliminary certification of an FLSA collective action for

³ The \$5,000 “enhancement award” includes a payment of \$5,000 to each of two Plaintiffs, totaling \$10,000 on account of their services as a Class Representative, as well as consideration for the execution by each of a general release of claims, including those for violation of Code §§226(b) and 1198.5, claims which each asserted in their Complaints, but on an individual basis only. Settlement ¶ 15. (e).

1 purposes of notice; (4) approval of the form and method of providing class-wide notice;
2 (5) appointment of Harris & Ruble as counsel for the settlement class and collective
3 (“class counsel”); (6) preliminary appointment of the class representatives and approval
4 of incentive and/or enhancement awards for them; and (7) preliminary approval of an
5 application for attorneys’ fees and costs.


6 The Settlement Agreement was fully executed on September 26, 2023. The
7 proposed Notice is attached to the Settlement Agreement, and the Opt Out Form and
8 Objection forms are attached as Exhibit 2 to the Harris Declaration, filed herewith.
9 Unless otherwise noted, capitalized terms herein have the meanings set forth in the
10 Settlement.

11 The undersigned has negotiated and secured this Settlement in light of the
12 requirements of Rule 23 of the Federal Rules of Civil Procedure and relevant federal case
13 law, from Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 687-88 (1946), to date, as
14 well as the California Supreme Court direction that “statutes governing conditions of
15 employment are to be construed broadly in favor of protecting employees.”⁴

16 The Motion will be made and based upon this Notice of Motion; the Memorandum
17 of Points and Authorities appended hereto; the Declarations filed herewith; all of the
18 pleadings, papers, and documents contained in the file of the within actions; and such
19 further evidence and argument as may be presented at or before the hearing on the
20 Motion. This Motion is made following the conference of counsel pursuant to Local
21 Rule 7-3 which took place on June 1, 2023, and on subsequent dates thereafter.

22 Dated: September 29, 2023

HARRIS & RUBLE

23
24 
25 Alan Harris

26
27 ⁴ California has long had a strong public policy favoring the prompt payment of wages. The purpose of
28 sections 203, 226, 510 and 1194 of the Labor Code is to put teeth into that policy. Smith v. Rae-Venter
Law Group, 29 Cal. 4th 345, 389 (2002).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Plaintiffs William Mann and Alex Rojas and Defendants ABC Signature, LLC (“ABC SL”) and Twentieth Century Fox Film Corporation (“TCFFC”) have reached a settlement of the collective action, class-wide and representative claims alleged in this case.⁵ This non-reversionary settlement requires that Defendants pay a total of \$4,800,000. Settlement ¶ 15 (a). Defendants will also make additional payments, outside of and in addition to the gross settlement fund, for the employer’s portion of payroll taxes. *Id.* ¶ 15(c). No claim process is required. The approximate gross recovery for each of the Class Members, assuming no opt-outs, is approximately \$138.57 dollars (= \$4,800,000 [Total Settlement Value]/34,640 [number of workers]). The Settlement also provides that \$100,000 shall be allocated for payment of PAGA civil penalties, 75% of which shall be paid to the Labor & Workforce Development Agency (“LWDA”) and 25% of which shall be allocated to Aggrieved Employees, with every Aggrieved Employee, even those who might opt out of the settlement of the class and collective action claims, receiving a payment of at least \$1.00. *Id.* ¶ 15(d). This Settlement has an appropriately crafted, narrow release. Assuming all requested payments are approved by the Court, the Net Settlement Proceeds distributable to the settlement class and collective members and the alleged aggrieved employees under PAGA is an estimated \$2,910,000.⁶ As detailed below, and in the Jon Katzman (“Katzman”)⁷ and Alan Harris (“Harris”) Declarations filed herewith, along with Plaintiffs’ Declarations, the Settlement and this

⁵ Unless otherwise noted, capitalized terms herein have the meanings set forth in the Stipulation of Settlement and Release (the “Settlement”). The Settlement is Exhibit 1 to the September 29, 2023, Declaration of Alan Harris (the “Harris Decl.,” filed herewith). The Harris Declaration includes extensive analysis of the relationship between the total potential recovery in this case and the amounts offered in the Settlement.

⁶ The estimated settlement administration cost is \$145,000 with proposed Settlement Administrator, CPT Group, Inc. The Settlement provides that \$100,000 will be paid on account of the PAGA claim. Plaintiffs may apply to the Court for an award of attorneys’ fees of up to 33.3% of the Settlement Amount (\$1,600,000) and costs not to exceed \$35,000. Plaintiffs will also apply to the Court for enhancement awards of \$5,000 per Plaintiff totaling \$10,000 for the two proposed Class Representatives.

⁷ Mr. Katzman is a consulting expert for Plaintiffs. He has long worked as an executive in the motion picture industry and has capped his career with lengthy teaching experience.

1 litigation provide substantial relief to Class Members. Under those circumstances, the
2 projected net recovery should average at least \$88.18 (=\$2,910,000 [Net Settlement
3 Proceeds] / 33,000 [Projected Class Size]).

4 Further, Plaintiffs contend that as a result of this lawsuit, both TCFFC and ABCSL
5 now reimburse crew with daily \$3.00 payments on account of routine business use by
6 crew of their personal cell phones. Harris Decl. ¶ 17. In addition, Defendants' wage and
7 hour training and reminders to their staff and management employees in California have
8 resulted in an apparent decrease of tardy payment of wages to crew. The Defendants
9 stress the importance of taking uninterrupted meal and rest breaks, and timely payment of
10 wages for all hours worked. Harris Decl. ¶ 20. Plaintiffs now respectfully move for
11 preliminary approval of the Settlement and conditional certification of the Settlement
12 Class and related collective action.

13 **II. PROCEDURAL HISTORY AND SUMMARY OF SETTLEMENT**

14 **A. Procedural History**

15 This is a PAGA law enforcement action, class action and FLSA collective action,
16 seeking unpaid wages, damages, penalties, civil penalties and attorneys' fees and costs,
17 against TCFFC and ABCSL.⁸ Plaintiffs' Second Amended Complaint ("SAC") [ECF
18 Doc. 32] was filed after the Court's June 1, 2023, ruling that Rojas be related to Mann.
19 The SAC alleges the following claims against Defendants: violation of the Fair Labor
20 Standards Act (the "FLSA"), the California Business & Professions Code, and the
21 following provisions of the California Labor Code (the "Code"): (1) §§ 201.3, 201.5, and
22 203 Continuing Wages; (2) § 226(a), Failure to Provide Compliant Wage Statements; (3)
23 §§ 226.7, 512 and Wage Order No. 12, Failure to Provide Meal Breaks; § 226.7 and
24 Wage Order No. 12, Failure to Provide Rest Breaks; (4) § 510, 515, and 1194 Failure to
25 Provide Pay Proper Overtime; (5) §§ 1194 and 1198 Failure to Provide Pay Proper
26 Minimum Wages; (6) Code § 2802, Failure to Reimburse Business Expenses, including

27 ⁸ On January 5, 2022, Rojas provided statutory notice to the LWDA and to Defendant TCFFC of the
28 claims set forth in his Complaint.

1 cell phone expenses; and (7) §§ 2698, *et seq.*, Civil Penalties under PAGA.

2 On June 1, 2023, the Parties attended a private mediation with experienced class
3 action Mediator Lynn Frank.⁹ Harris Decl. ¶ 12. The Parties accepted a Mediator's
4 Proposal resulting in the execution of a Memorandum of Agreement. *Id.* After
5 mediation, the parties memorialized their compromise in the present, Settlement
6 Agreement. Harris Decl., Ex. 1.

7 The parties have engaged in significant investigation of the facts at issue, and have
8 exchanged extensive documents and data, all of which allowed the Parties to fully assess
9 the value of the claims involved. This Agreement comes after nearly three years of
10 litigation and intense settlement negotiations, including a full day of mediation and many
11 subsequent conference calls and follow up conferences. Harris Decl., ¶ 13.

12 **B. Settlement Terms**

13 **1. The Gross Settlement Amount and Net Settlement Proceeds**

14 Plaintiffs and their counsel have concluded that the \$4,800,000 Settlement is fair,
15 reasonable, and in the best interests of the Settlement Class and respectfully request that
16 the Settlement be approved. The settlement amount is non-reversionary, and not claims
17 made. Subject to this Court's approval, the Gross Settlement Amount will be used to
18 pay: (a) the PAGA civil penalties,¹⁰ (2) the costs of delivering the Class Notice to the
19 Settlement Class and administering the distribution of funds, (3) Class Counsels'
20 attorney's fees and costs, and (4) Enhancement Awards to Plaintiffs. The remainder of
21 funds after accounting for the above payments will constitute the Net Settlement
22 Proceeds (the "NSP").

23 The NSP will be distributed to Settlement Class members who do not "opt out" of
24 the settlement. Settlement ¶ 15 (b). Taking into account the requested enhancement

25 ⁹ "Ms. Frank has specialized exclusively in the mediation of complex disputes since 1987. She has
26 successfully mediated over one thousand matters covering . . . employment . . . wage and hour class
27 action . . . and entertainment [industry matters]. Ms. Frank currently serves as an Appellate Mediator for
28 the First District Court of Appeals in California." <https://frankandfeder.com/lynn-frank/> (last accessed
September 29, 2023).

¹⁰ Under the PAGA, 75% of the \$100,000 PAGA allocation shall be paid to the LWDA, with the
remaining 25% to be distributed to the Aggrieved Employees.

1 awards to Plaintiffs (up to \$5,000 for each of Mann and Rojas, a total of \$10,000), the
2 maximum amount of attorney's fees and costs permitted to be awarded under the
3 Settlement (\$1,600,000 and \$35,000), and the estimated costs of settlement
4 administration (\$145,000), the NSP is estimated to be, at minimum, \$2,910,000
5 (= \$4,800,000 Gross Settlement Value - \$10,000 enhancement awards - \$1,600,000
6 attorney's fees - \$35,000 attorney's costs - \$145,000 settlement administration costs).
7 The PAGA allocation of \$100,000 is over 3.4% of the NSP.

8 **2. The Allocation of Funds**

9 The Net Settlement Proceeds is allocated among the Class Members so that they
10 will receive payments related to the alleged harms they suffered based on Total Class Pay
11 Periods Worked. So if a Class Member worked for each Defendant, they will be entitled
12 to receive a payment relating to each effort. The Net Settlement Proceeds will be
13 distributed to each Class Member under the following rubric:

14 (i) "Total Class Pay Periods Worked" will be the total
15 number of pay periods during which Class Members worked for any of the
16 Defendants on at least one workday, during the Class Period and received a
17 wage statement, according to the records of Defendants. "Individual Class
18 Pay Periods Worked" will be the total number of pay periods during which a
19 Class Member worked for any of the Defendants on at least one workday,
20 during the Class Period and received a wage statement, according to the
21 records of Defendants; and

22 (ii) "The Individual Settlement Payment" will be based on a
23 ratio of the Total Class Pay Periods Worked to the Individual Class Pay
24 Periods Worked, calculated by dividing the Individual Class Pay Periods
25 Worked of a Class Member by the Total Class Pay Periods Worked of all
26 Class Members during the Class Period and multiplying this result by the
27 Net Settlement Proceeds. However, the distribution formula may be
28

1 modified so that no participating Class Member receives a payment of less
2 than \$10.

3 Settlement ¶ 15(b). Based on careful review by Class Counsel and Plaintiffs, including
4 an analysis of the unpaid wages, damages, penalties and civil penalties at issue in this
5 case, all have concluded that the settlement is fair to the Class. (Harris Decl., ¶ 19; Mann
6 Decl., ¶ 7; Rojas Decl. ¶ 7.)

7 The Settlement is sufficient to provide Plaintiffs and Class Members a reasonable
8 recovery for their lost wages and Defendants' tardy implementation of a routine
9 procedure for reimbursement of cell phone expenses. In a case seeking recovery of
10 unpaid wages and Defendants' failure to reimburse necessary employee expenses, it is
11 appropriate to substantially discount penalties and civil penalties, or to entirely exclude
12 them from the analysis, as in Rodriguez v. West Publ'g Corp., 563 F.3d 948, 964 (9th
13 Cir. 2009)¹².

14 **3. Settlement Administration**

15 Plaintiffs sought bids for settlement administration from qualified companies and
16 request that the Court appoint CPT Group, Inc. to act as the settlement administrator to
17 perform notification services and settlement administration pursuant to the terms of the
18 Settlement. Harris Decl., ¶ 28. The deadline for claims, objections, and opt-outs will be
19 forty five (45) days after class notice is sent, a notice designed to provide the best notice
20 practicable. Settlement ¶ 25. If five percent (5%) or more of the Class Members submit
21 a timely request for exclusion, or if a number of Class Members whose share of the Net
22 Settlement Proceeds represents five percent (5%) or more of the Net Settlement Proceeds
23 validly elect not to participate in the Settlement, Defendant, in its sole election, has the
24 right to void this agreement and all rights and obligations contained therein. Id. ¶ 27. In
25 such case the Parties shall return to their respective previous positions prior to entry of
26

27 ¹² See Miller v. CEVA Logistics USA, 2015 WL 729638, at *7 (E.D. Cal, Feb. 19, 2015) (evaluating
28 fairness of wage and hour class action by comparison to potential exposure exclusive of penalties);
Richardson v. Interstate Hotels & Resorts, Inc. 2019 WL 803746 at *3 (N.D. Cal. Feb 21, 2019) (the
court evaluated the settlement amount exclusive of penalties).

1 this Agreement and Defendant agrees to bear all settlement administration costs incurred
2 up to the date of nullification. Id.

3 **4. Enhancement Awards and Reimbursement Fees and Costs**

4 Plaintiffs will petition the court for class representative enhancement awards (not
5 to exceed \$5,000 each). According to the Ninth Circuit, “[i]ncentive awards are fairly
6 typical in class action cases” and “are intended to compensate class representatives for
7 work done on behalf of [a] class, to make up for financial or reputational risk undertaken
8 in bringing the action, and, sometimes, to recognize their willingness to act as a private
9 attorney general.” Rodriguez v. West Publ’g Corp., 563 F.3d at 958–59 (emphasis
10 removed), vacated on other grounds, 688 F.3d 645, 660 (9th Cir. 2012). The incentive
11 awards requested here are reasonable in light of the work pursuing this action with
12 counsel. The declarations of Plaintiffs submitted herewith detail their efforts in
13 connection with this case.

14 Defendant has also agreed not to oppose Class Counsel’s application for an award
15 of attorney’s fees and reimbursement of actual litigation expenses. Pursuant to the terms
16 of the Settlement Agreement, Class Counsel intend to apply for an award of attorney’s
17 fees in an amount not to exceed \$1,600,000 to Class Counsel, as well as an award of
18 actual costs of no more than \$35,000 as awarded by the Court.¹³ Plaintiffs’ counsel
19 should be awarded their requested fee. This litigation and the culminating settlement has
20 resulted in a substantial cash recovery, resolving two cases. Indeed, since the underlying
21 claims at issue here are largely state-law claims, filed in state court, “California law
22 governs this fee application because where state law claims predominate, state law
23 applies to determine the right to fees and the method of calculating them”—and the
24 federal 25% “benchmark” should not apply here since, “[u]nder the percentage method,
25 California has recognized that most fee awards based on either a lodestar or percentage
26 calculation are 33 percent.” Beaver v. Tarsadia Hotels, No. 11-cv-01842-GPC-KSC,

27
28

¹³ Harris Decl., Ex. 1 at pp. 18-19, ¶¶ 18(a) and (b).

1 2017 WL 4310707, at *9 (S.D. Cal. Sept. 28, 2017).¹⁴ A court overseeing a class-wide
2 settlement in federal actions, such as under the FLSA, “has discretion to apply either a
3 lodestar method or the percentage-of-the-fund method in calculating a fee
4 award.” Stetson v. Grissom, 821 F.3d 1157, 1165 (9th Cir. 2016) (internal quotation
5 marks omitted). Regardless, though, of which method is selected, or whether state or
6 federal law applies, courts in the Ninth Circuit should “cross-check[] their calculations
7 against [the non-selected] method” to assure themselves that the calculated fee is
8 reasonable. In re Bluetooth Headset Prods. Liability Litig., 654 F.3d 935, 944 (9th Cir.
9 2011). Accordingly, “even though the lodestar method may be a perfectly appropriate
10 method of fee calculation. . . courts [are] to guard against an unreasonable result by cross-
11 checking their calculations against a second method.” Id.

12 In any event, the Settlement Class Members will be given an opportunity to object
13 to Class Counsel’s requested attorney’s fees, and the Court will have an opportunity to
14 address the fee award after Class Counsel have filed the necessary fee petition.

15 **III. CONDITIONAL CERTIFICATION IS APPROPRIATE**

16 Under Ninth Circuit precedent, there is “a strong judicial policy that favors
17 settlements, particularly where complex class action litigation is concerned.” Allen v.
18 Bedolla, 787 F.3d 1218, 1223 (9th Cir. 2015) (internal quotation marks omitted). Federal
19 Rule of Civil Procedure 23(e) requires district court approval of class action settlements.
20 “[S]ettlement class actions present unique due process concerns for absent class
21 members.” Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998) overruled on
22 other grounds by Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011). Concerns about
23

24 ¹⁴ See also McGrath v. Wyndham Resort Dev. Corp., No. 15cv1631 JM (KSC), No. 15cv1631 JM
25 (KSC), 2018 WL 637858, at *7–8 (S.D. Cal. Jan. 30, 2018) (explaining that, “[u]nder California law,
26 which applies here, attorneys’ fees in class action cases may be calculated in one of two ways: the
27 percentage method . . . or the lodestar method,” and that the typical fee award under California law is
28 “one-third of the common fund”); Spann v. J.C. Penney Corp., 211 F. Supp. 3d 1244, 1262 (C.D. Cal.
2016) (stating that, “[i]n diversity actions such as this one, the Ninth Circuit applies state law to
determine the right to fees and the method for calculating them,” and that “[e]mpirical studies show
that, regardless whether the percentage method or the lodestar method is used, fee awards in class
actions [subject to California law] average around one-third of the recovery”) (quoting Chavez v.
Netflix, Inc., 162 Cal. App. 4th 43, 66 n.11 (2008)).

1 the rights of absent Settlement Class Members can be dispelled by the Court’s review of
2 the Settlement Agreement and by the procedural protections provided by Rule 23.
3 Officers for Justice v. Civil Serv. Comm., 688 F.2d 615, 624–25 (9th Cir. 1982), cert.
4 denied, 459 U.S. 1217 (1983). A trial court has wide discretion in certifying a class for
5 settlement purposes and will be reversed “only upon a strong showing that [its] decision
6 was a clear abuse of discretion.” Dunleavy v. Nadler, 213 F.3d 454, 461 (2000) (quoting
7 Linney v. Cellular Alaska P’ship, 151 F.3d 1234, 1238 (9th Cir. 1998)). In instances
8 where parties arrive at a settlement before class certification, “courts must peruse the
9 proposed compromise to ratify both the propriety of the certification and the fairness of
10 the settlement.” Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).

11 Preliminary approval of class action settlements involves a two-step inquiry. In re
12 Volkswagen “Clean Diesel” Mktg., Sales Practices & Prods. Liab. Litig., 2017 WL
13 672727, at *12 (N.D. Cal. Feb. 16, 2017). In the first step, courts decide if a class exists.
14 Staton, 327 F.3d at 952. “Such attention is of vital importance, for a court asked to
15 certify a settlement class will lack the opportunity, present when a case is litigated, to
16 adjust the class, informed by the proceedings as they unfold.” Amchem Prods., Inc. v.
17 Windsor, 521 U.S. 591, 620 (1997). In the second step, courts consider “whether a
18 proposed settlement is fundamentally fair, adequate, and reasonable.” Hanlon, 150 F.3d
19 at 1026. If the parties settle before class certification, the Ninth Circuit requires “a more
20 probing inquiry than may normally be required under Rule 23(e).” Id. During the
21 preliminary approval stage, courts “determine whether the settlement falls ‘within the
22 range of possible approval.’” Booth v. Strategic Realty Tr., Inc., 2015 WL 3957746, at
23 *6 (N.D. Cal. Jun. 28, 2015) quoting In re Tableware Antitrust Litig., 484 F.Supp.2d
24 1078 (N.D. Cal. 2007)). Courts examine “the settlement taken as a whole, rather than the
25 individual component parts. . . for overall fairness.” Hanlon, 150 F.3d at 1026.

26 **A. Class Certification Is Warranted**

27 Class actions are favored, and Rule 23 is to be given a broad interpretation in favor
28 of maintaining class actions. Labbate-D’Alauro v. GC Servs. Ltd. P’ship, 168 F.R.D.

451, 454 (E.D.N.Y. 1996). Rule 23 requires the party seeking certification to satisfy all four requirements of Rule 23(a)¹⁵ and at least one of the subparagraphs of Rule 23(b). Here, Plaintiff seeks certification under Rule 23(b)(3). As explained in Espinosa v. Ahearn (In re Hyundai & Kia Fuel Econ. Litig.), 926 F.3d 539 (9th Cir. 2019) (*en banc*):

The criteria for class certification are applied differently in litigation classes and settlement classes. In deciding whether to certify a litigation class, a district court must be concerned with manageability at trial. However, such manageability is not a concern in certifying a settlement class where, by definition, there will be no trial.

In re Hyundai, 926 F.3d at 556-57.

1. Numerosity

Here, the numerosity requirement is met. Again, there are a maximum of 34,640 Settlement Class Members and 33,000 anticipated at the time of Preliminary Approval, which is the cut off date for Class Members.¹⁶ Given that “courts will typically find the numerosity requirement satisfied when a class includes 40 or more members,” Sibert v. TV Magic, Inc., 2012 U.S. Dist. LEXIS 118245 (C.D. Cal. filed Aug. 21, 2012) (citing Rannis v. Recchia, 380 Fed. Appx. 646, 651 (9th Cir. 2010), and given that common sense indicates that joinder of all Class Members would be “impracticable,” the Class is sufficiently numerous to justify certification.

2. Commonality

“[C]ommonality requires that the class members’ claims ‘depend upon a common contention’ such that ‘determination of its truth or falsity will resolve an issue that is central to the validity of each claim in one stroke.’” Abdullah v. U.S. Sec. Associates,

¹⁵ Rule 23(a) contains the following certification requirements:

¹⁶ “As a threshold matter, and apart from the explicit requirements of Rule 23(a), the party seeking class certification must demonstrate that an identifiable and ascertainable class exists.” Mazur v. eBay Inc., 257 F.R.D. 563, 567 (N.D. Cal. 2009). “A class definition should be precise, objective and presently ascertainable.” Id. (citing Rodriguez v. Gates, 2002 WL 1162675, *8 (C.D. Cal. 2002). Here, Defendants’ agents (payroll vendors) maintain records identifying each of the class members.

1 Inc., 731 F.3d 952, 957 (9th Cir. 2013) cert. denied, 574 U.S. 815 (2014). “This does not,
2 however, mean that *every* question of law or fact must be common to the class; all that
3 Rule 23(a)(2) requires is “a single *significant* question of law or fact.” Id. Rule 23(a)(2),
4 in other words, is construed “permissively,” with the analysis thereunder proceeding far
5 less rigorously than that under Rule 23(b)(3), discussed infra Hanlon v. Chrysler Corp.,
6 150 F.3d 1011, 1019 (9th Cir. 1998). Compare Fed. R. Civ. Proc. 23(b)(3) (requiring that
7 common questions of law or fact “predominate” in class actions maintained under this
8 subsection) with Fed. R. Civ. Proc. 23(a)(2) (not including “predominate” or similar
9 language in describing the general commonality requirement). Accordingly, it is
10 sufficient for class members to share legal issues but divergent facts or, similarly, to share
11 a common core of facts but to base their claims for relief on different legal theories.
12 Hanlon, 150 F.3d at 1019. In re Cooper Companies Inc. Sec. Litig., 254 F.R.D. 628, 634
13 (C.D. Cal. 2009) (“[A] few factual variations among the class grievances will not defeat
14 commonality so long as class members’ claims arise from ‘shared legal issues’ or ‘a
15 common core of salient facts’”) (quoting Staton v. Boeing Co., 327 F.3d 938, 953 (9th
16 Cir. 2003)). In point of fact, the Ninth Circuit considers the requirements for finding
17 commonality under Rule 23(a)(2) to be “minimal,” Id. at 1020, and for the party to have
18 only “a single *significant* question of law or fact.” Mazza v. Am. Honda Motor Co., 666
19 F.3d 581, 589 (9th Cir. 2012). See also Wal-Mart Stores, Inc., 564 U.S. 338, 359 (“We
20 quite agree that for purposes of Rule 23(a)(2) “even a single [common] question” will
21 do.”) (brackets in original).

22 Commonality is readily satisfied where a “lawsuit challenges a system-wide
23 practice or policy that affects all putative class members.” Armstrong v. Davis, 275 F.3d
24 849, 868 (9th Cir. 2001) abrogated on other grounds by Johnson v. California, 543 U.S.
25 499, 504-05 (2005). Such system-wide policies and practices are present in this action
26 for the Settlement Class, including: (i) whether Defendants’ practice of routinely issuing
27 tardy payment of final wages warrants imposition of penalties and civil penalties; (ii)
28 whether Defendants’ systematic rounding of the start and end of meal breaks was legal;

(iii) whether Defendants’ wage statements complied with Labor Code section 226; and
(iv) whether Defendant failed to provide proper compensation to Class Members who were allegedly required to have cell phones and/or walkie-talkies operating at all times, failing to either reimburse them for the costs of maintaining their cell phones or to pay them premium wages for failure to provide duty-free rest breaks and meal periods, as required by Augustus v. ABM Sec. Servs. Inc., 2 Cal. 5th (2016) and Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th 93, 106-07, 111 (2022). Whether these common matters violate the law can be determined in a single action for all employees.

3. Typicality

Rule 23(a)(3) requires that “the claims . . . of the representative part[y be] typical of the claims . . . of the class.” Fed. R. Civ. Proc. 23(a)(3). The Ninth Circuit also interprets this requirement permissively. Hanlon, 150 F.3d at 1020. Typicality requires that the named plaintiffs be members of the classes that he or she seek to represent and that he or she “possess the same interest and suffer the same injury” as class members. Gen. Tel. Co. of the Southwest v. Falcon, 457 U.S. 147, 156 (1982). The named plaintiff’s claims need not be identical to the claims of the class; instead, the claims need only be “reasonably co-extensive with those of absent class members.” Hanlon, 150 F.3d at 1020. It is sufficient for the plaintiff’s claims to “arise from the same remedial and legal theories” as the class’s claims. Arnold v. United Artists Theatre Circuit, Inc., 158 F.R.D. 439, 449 (N.D. Cal. 1994); Cal. Rural Legal Assistance v. Legal Servs. Corp., 917 F.2d 1171, 1175 (9th Cir. 1990) (explaining that class representatives and members of the class need only “share a common issue of law or fact”). For this reason, Rule 23(a)(3) does not require a class representative for each job category or location that may be included in a class. Staton, 327 F.3d at 957 (rejecting the defendant’s argument that typicality requires plaintiffs to “provide clear documentation that each job category had a class representative”); Taylor v. Union Carbide Corp., 93 F.R.D. 1, 6 (S.D. W. Va. 1980); Hartman v. Duffey, 19 F.3d 1459, 1471–72 (D.C. Cir. 1994). Cf. Wofford v. Safeway Stores, Inc., 78 F.R.D. 460, 488 (N.D. Cal. 1978) (“Factual variations are not fatal to a

1 proposed class when the claims arise out of the same remedial and legal theory.”);
2 Wehner v. Syntex Corp., 117 F.R.D. 641, 644 (N.D. Cal. 1987) (“Factual differences are
3 acceptable provided the claim arises from the same event or course of conduct and is
4 based on the same legal theory.”). All that is required is that the representative —the
5 named plaintiff—be similarly situated so that he or she will have the incentive or motive
6 to litigate on behalf of all class members. Here, Plaintiffs are non-exempt employees
7 who were subject to the same violations as other workers producing motion pictures.
8 Rojas Decl. ¶ 8; Mann Decl. ¶ 8.

9 Common issues permeate this action. The U.S. Supreme Court has stated that Rule
10 23(a)(3)’s typicality and commonality requirements “tend to merge,” and a finding of
11 commonality ordinarily supports a finding of typicality. Gen. Tel. Co. of the Sw., 457
12 U.S. at 157 n.13; Wehner, 117 F.R.D. at 644 (observing a “necessary overlap of the
13 provisions of Rule 23”); Cal. Rural Legal Assistance, 917 F.2d at 1175 (“Fed. R. Civ. P.
14 23 . . . does not require the named plaintiffs to be identically situated with all other class
15 members. It is enough to share a ‘common issue of law or fact.’”) (internal citations
16 omitted). Because Plaintiffs possess the same interests, have suffered the same injury,
17 and allege identical violations to other Class Members, typicality exists.

18 The only claims that the proposed Class Representatives seek to represent are the
19 claims of others who, like them, were subject to the alleged violations in this case. Both
20 of the Plaintiffs suffered each violation. Mann Decl. ¶ 8; Rojas Decl. ¶ 8.)

21 **4. Predominance and Superiority**

22 In addition to the above-described four requirements, this case must also meet one
23 of the non-exclusive factors in Rule 23(b). Rule 23(b) authorizes class certification if a
24 court determines that “questions of law or fact common to the members of the class
25 predominate over any questions affecting only individual members, and that a class
26 action is superior to other available methods for the fair and efficient adjudication of the
27 controversy.” Fed. R. Civ. Proc. 23(b)(3). The predominance inquiry is whether
28 proposed classes are sufficiently cohesive to warrant adjudication by representation.

1 Amchem Products, Inc. v. Windsor, 521 U.S. 591, 623 (1997). The inquiry “presumes
2 that the existence of common issues of fact or law have been established pursuant to Rule
3 23(a)(2),” and focuses on whether the “common questions present a significant aspect of
4 the case and they can be resolved for all members of the class in a single adjudication.”
5 If the question or questions are significant for the proposed class, they predominate and,
6 “there is clear justification for handling the dispute on a representative rather than on an
7 individual basis.” Hanlon v. Chrysler Corp., 150 F.3d 1011, 1022 (9th Cir. 1998)
8 overruled on other grounds (quoting 7A Charles Alan Wright et al., Federal Practice &
9 Procedure § 1777 (2d ed. 1986)). While the commonality inquiry asks whether the class
10 shares issues capable of resolution through common proof, the predominance inquiry
11 asks whether resolving those common issues is apt to drive the case’s resolution, or
12 instead, whether individual inquiries are going to overwhelm common questions. Amgen
13 Inc. v. Connecticut Ret. Plans & Trust Funds, 568 U.S. 455; 469 (2013). Here, there is
14 nothing to indicate that individual inquiries could “overwhelm” the common questions
15 which are drivers of each alleged violation.

16 The superiority requirement ensures that classes will only be certified under Rule
17 23(b)(3) if they will “achieve economies of time, effort, and expense, and promote . . .
18 uniformity of decision as to persons similarly situated, without sacrificing procedural
19 fairness or bringing about other undesirable results.” Amchem, 521 U.S. at 615 (internal
20 quotations and citation omitted). With respect to superiority, there can be no question but
21 that resolution of this case will achieve economies of time and assure uniformity of
22 decision.

23 Plaintiffs contend that the core common questions in this case—the lawfulness of
24 Defendants' policies and practices with respect to payment of final wages, provision of
25 meal periods and rest breaks, design of paystubs, and reimbursement of cell phone
26 expenses predominate over any differences with respect to implementation of those
27 policies and practices. As such, this Court should conclude that common questions of
28 law and fact predominate. As noted with respect to the commonality requirement, a

1 central issue in this case is the legality of Defendants’ policies. Notably, individual
2 determinations on damages do not defeat class certification. See Yokoyama v. Midland
3 Nat’l Life Ins. Co., 594 F.3d 1087, 1089 (9th Cir. 2010) (stating that “[t]he potential
4 existence of individualized damage assessments, however, does not detract from the
5 action’s suitability for class certification,” and explaining “that ‘[t]he amount of damages
6 is invariably an individual question and does not defeat class action treatment’”). For
7 example, Class certification should be granted where there is a dispute with respect to
8 whether Defendants’ routine failure to make timely payment of final wages was
9 “willful,” the showing required to result in an obligation for the employer to pay
10 “continuing wages” required by Code § 203. Should certification be granted in an action
11 by employees seeking reimbursement of work-related cell phone expenses because Code
12 § 2802, requires an employer to reimburse an employee for the reasonable expense of the
13 mandatory use of a personal cell phone, regardless of the details of the employee’s cell
14 phone plan, whether the phone bill is paid for by a third person or at all, and whether the
15 employee changed plans to accommodate worked-related cell phone usage. To show
16 liability under § 2802, an employee need only show that he or she was required to use a
17 personal cell phone to make work-related calls, and that he or she was not reimbursed.
18 Cochran v. Schwan’s Home Service, Inc., 228 Cal. App. 4th 1137, 1139 (2014). There is
19 no issue regarding procedural unfairness, when the alternative to class-wide settlement is
20 the near certainty that the overwhelming majority of the workers will never receive any
21 recovery, at all.

22 A class action is also superior where individuals may forgo pursuing otherwise-
23 meritorious claims due to the fear of retaliation. This chilling effect is uniquely present
24 in employment actions. In Gentry v. Superior Court, 42 Cal.4th 443 (2007), the
25 California Supreme Court recognized that “retaining one’s employment while bringing
26 formal legal action against one’s employer is not a viable option for many employees.”
27 Id., at 459. “[F]ederal courts have widely recognized that fear of retaliation for
28 individual suits against an employer is justification for class certification in the arena of

1 employment litigation, even when it was otherwise questionable that the numerosity
2 requirement of Rule 23 were satisfied.” Id., at 460. “[F]ear of economic retaliation
3 might often operate to induce aggrieved employees quietly to accept substandard
4 conditions.” Id., at 460. Finally, the wages due to any one employee may well be
5 insufficient to attract counsel who are ready, willing, and able to prosecute individual
6 cases. The blessing of class and collective actions are that they incentivize counsel to
7 litigate such claims that might otherwise be abandoned. This is particularly important in
8 actions to vindicate wage and hour rights. The class procedure may be the only method
9 by which these claims can be resolved. Indeed, in such a case, recovery by any
10 individual is unlikely. “[A]bsent a class suit, defendant will retain the benefits from its
11 alleged wrongs. A procedure that would permit the allegedly injured parties to recover . .
12 . is preferred over the forgoing.” Daar v. Yellow Cab Co., 67 Cal.2d 695, 715 (1967).

13 **5. Adequacy**

14 Representative parties must also fairly and adequately protect the interests of the
15 class. See Fed. R. Civ. P. 23(a)(4). Generally speaking, “[w]hether the class
16 representative[] satisf[ies] the adequacy requirement depends on the qualifications of
17 counsel for the representatives, an absence of antagonism, a sharing of interests between
18 representatives and absentees, and the unlikelihood that the suit is collusive.” Rodriguez
19 v. Hayes, 591 F.3d 1105, 1125 (9th Cir. 2010) (omitting internal quotation marks)
20 (quoting Walters v. Reno, 145 F.3d 1032, 1046 (9th Cir. 1998) and Crawford v. Honig,
21 37 F.3d 485, 487 (9th Cir. 1994)); see Ellis v. Costco Wholesale Corp., 657 F.3d 970,
22 985 (9th Cir. 2011) (“To determine whether named plaintiffs will adequately represent a
23 class, courts must resolve two questions: ‘(1) do the named plaintiffs and their counsel
24 have any conflicts of interest with other class members and (2) will the named plaintiffs
25 and their counsel prosecute the action vigorously on behalf of the class?’”); see also
26 Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.,
27 244 F.3d 1152, 1162 (9th Cir. 2001) (“The record indicates clearly that [the class
28 representative] understands his duties and is currently willing and able to perform them.

1 The Rule does not require more.”).

2 Plaintiffs are adequate class representatives. The alleged fact-pattern for each of
3 them are similar, if not identical, to the fact-pattern for other Settlement Class Members.
4 Plaintiffs have no conflicts of interest with Settlement Class Members, as they share their
5 desire to be paid in full. Additionally, Plaintiffs are committed to pursuing the claims of
6 the Settlement Class, and their motivation in retaining counsel and pursuing this action
7 has been to seek reimbursement for themselves and Settlement Class Members. Harris
8 Decl., ¶ 29.

9 Counsel have no conflict of interest with Settlement Class Members and have
10 diligently prosecuted this action on behalf of the class. *Id.* ¶¶ 29-30. Counsel has
11 diligently researched the facts of this case, interviewing numerous current and former
12 defense employees. Harris Decl., ¶¶ 15, 30. Proposed Class Counsel are experienced in
13 both litigation in the entertainment industry and the prosecution of Class Actions and
14 other matters on behalf of the State of California and other public entities. *E.g., U.S. v.*
15 *Gleneagles Inv. Co., Inc.*, 584 F. Supp. 671, 689 (M.D. Pa. 1984), *aff’d in part and*
16 *vacated in part, and remanded sub. nom., U.S. v. Tabor Ct. Realty Corp.* 803 F.2d 1288
17 (3d Cir. 1986), *cert. den. sub. nom., McClellan Realty Co. v. U.S.* 483 U.S. 1005 (1987);
18 *Tremblay v. Chevron Stations, Inc.*, N.D. Cal. Case No. CV-07-6009 EDL (\$4,500,000
19 settlement of labor-law claims); *Doty v. Costco Wholesale Corp.*, C.D. Cal. Case No. CV
20 05-3241 FMC (JWJx) (\$7,500,000 distributed to class members for FLSA and California
21 Labor Code section 203 and 226 violations); *Ruacho v. Time Warner Cable Inc.*, Case
22 No. 2:15-cv-05592-AB-FFM (C.D. Cal. 2015); *Schroeder v. Envoy Air, Inc.*, 2:16-cv-
23 04911-MWF-KS; *Artiga et al. v. ABM Industry Groups, LLC*, Case No. 2:19-cv-06735-
24 GW-RAO (C.D. Cal. 2019).

25 **B. The Settlement Meets The Requirements For Preliminary Approval**

26 “[T]he preliminary approval stage [i]s an ‘initial evaluation’ of the fairness of the
27 proposed settlement made by the court on the basis of written submissions and informal
28 presentation from the settling parties.” *In re High-Tech Emp. Antitrust Litig.*, 2013 WL

6328811, at *1 (N.D. Cal. Oct. 30, 2013). A court need not conduct a complete analysis of the fairness factors at this time because “some of these ‘fairness’ factors cannot be fully assessed until the Court conducts the final approval hearing[.]” Lusby v. Gamestop Inc., 297 F.R.D. 400, 412 (N.D. Cal. 2013). Instead, at this stage, “[p]reliminary approval of a settlement and notice to the class is appropriate if ‘[1] the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls within the range of possible approval.’” Johnson v. Quantum Learning Network, Inc., 2016 WL 4529607, at *1 (N.D. Cal. Aug. 30, 2016) (quoting In re Tableware, 484 F. Supp. 2d at 1079). The “decision to approve or reject a settlement is committed to the sound discretion of the trial judge[.]” In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000), as amended (June 19, 2000) (internal quotation marks omitted).

A few years ago, Rule 23(e) was amended, effective December 1, 2018 to delineate factors that district courts must consider when evaluating a class settlement:

(2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). Plaintiffs' counsel carefully considered each factor and believe the proposed Settlement Agreement conforms with each requirement.

1. The Strength of Plaintiffs' Case

Defendants have disputed every aspect of Plaintiffs' case. Prior to this case being filed, as early as twenty years ago, in Greenberg v. EP Mgmt. Servs., LP, Los Angeles Superior Court Case No. BC237787 (filed 2000); Harrington v. Manpay, LLC, Los Angeles Superior Court Case No. BC312171 (filed 2004), Defendants disputed that their failure to routinely pay final wages as required was sufficiently "willful" as to justify imposition of penalties. They claimed that meal and rest breaks properly provided on a timely basis. Only months ago did they begin to reimburse crew expense of maintaining cell phones. See Bithell v. E.P. Mgmt. Servs., LP, 2007 Westlaw 4216854 (Cal. Ct. App. 2007) (sustaining class settlement of entertainment-industry employees for section 203 and 226 claims against entertainment-industry "payroll companies" and studios)

Finally, Defendants argue that certification is inappropriate in any event. If Defendants' arguments against certification prevailed, *none* of the Settlement Class and Aggrieved Employees might be entitled to *any* damages or penalties. The Settlement will provide participating Settlement Class Members with substantial payments of penalties and wages commensurate with the number and strength of their wage claims. It is therefore more than reasonable. This factor thus weighs in favor of approving the Settlement. While Plaintiffs believe their cases are factually and legally supported, the projected individual recoveries are significant in light of the amounts which might be recovered after years of additional litigation.

2. The Likely Duration Of Further Litigation

In most cases, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Nat'l

1 Rural Telcomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004)
2 (quoting 4 Alba Conte & Herbert Newberg, Newberg on Class Actions § 11:50 (4th ed.
3 2002)). The likely duration of further litigation might well be several years.
4 Accordingly, this factor also weighs in favor of approving the settlement.

5 **3. The Risk Of Maintaining Class-Action Status Through Trial**

6 Here, no class has been certified and even after certification might be achieved
7 “there is no guarantee that [a d]efendant w[ill] not move for and obtain decertification of
8 [a c]lass before or during trial.” Rodriguez v. West Publ’g Corp., 2007 WL 2827379 at
9 *8 (C.D. Cal. filed Sept. 10, 2007) (citing In re NASDAQ Market-Makers Antitrust
10 Litig., 187 F.R.D. 465, 476 (S.D.N.Y. 1998)), rev’d on other grounds, 563 F.3d 948 (9th
11 Cir. 2009). See also Rodriguez, 2007 WL 2827379 at *8 (stating that, “if
12 ‘insurmountable management problems were to develop at any point, class certification
13 can be revisited at any time under Fed. R. Civ. P. 23(c)(1)’”) (quoting In re NASDAQ
14 Market-Makers Antitrust Litig., 187 F.R.D. at 476).

15 With respect to meal-break claims in particular, the California Supreme Court has
16 held that “[a]n employer’s duty . . . under . . . section 512 . . . is an obligation to provide a
17 meal period,” which is satisfied if the employer “relieves its employees of all duty,
18 relinquishes control over their activities and permits them a reasonable opportunity to
19 take an uninterrupted 30-minute break.” Brinker Rest. Corp. v. Superior Court, 53 Cal.
20 4th 1004, 1040 (2012). This means that an employer is not liable for meal-break
21 violations if the employee voluntarily defers or foregoes a break. As explained by the
22 Central District of California, there is often “no way of determining on a class wide basis
23 whether [missed breaks] were violations . . . or whether individual class members
24 voluntarily opted to start their meal break late, cut it short, or not take a break at all.”
25 Ordonez v. Radio Shack, Inc., 2013 WL 210223 at *7 (C.D. Cal. filed Jan. 17, 2013).
26 Accordingly, there is a risk that fewer than all of Plaintiffs’ class claims will be sustained.
27 This factor weighs in favor of approval, particularly in light of the defense argument that
28 a person-by-person determination of the application of their policies requires hundreds of

1 mini-trials. See Wal-Mart Stores, Inc. v. Dukes, 131 S.Ct. 2541, 2548 (2011).

2 With respect to Plaintiffs' claim for waiting time penalties, Defendant alleged that
3 its good-faith belief that it paid all wages precluded the imposition of waiting time
4 penalties since Plaintiffs could not prove that Defendants' alleged failure to pay all final
5 wages at the time of separation was "willful." See, e.g., Pedroza v. PetSmart, Inc., No.
6 ED-CV-11-00298 GHK (DTBx), 2012 WL 9506073, *5 (C.D. Cal. June 14, 2012).

7 **4. The Settlement Amount Offered**

8 The gross settlement amount is \$4,800,000. The settlement is non-reversionary,
9 not claims made, and Defendants will pay an additional amount to fund the employer's
10 share of payroll taxes. Settlements awarding just over to less than 10% of damages are
11 often approved.

12 When considering the fairness and adequacy of the amount offered in
13 settlement, "it is the complete package taken as a whole, rather than the
14 individual component parts, that must be examined for overall fairness."
15 DIRECTV, 221 F.R.D. at 527 (citation omitted). "[I]t is well-settled law that
16 a proposed settlement may be acceptable even though it amounts to only a
17 fraction of the potential recovery that might be available to the class
18 members at trial." *Id.* (collecting cases).
19 Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving
20 settlement estimated to be as low as 9% of the potential liability); Jiangchen v. Rentech,
21 Inc., No. CV-17-1490-GW(FFMx)) 2019 U.S. Dist. LEXIS 180474 (C.D. Cal. Oct. 10,
22 2019), at *21 (finding 10% recovery of the total maximum damages reasonable in light of
23 the risks of continued litigation).

24 In Allen v. Bedolla, 787 F.3d 1218 (9th Cir. 2015), the Ninth Circuit reviewed
25 final approval of a settlement in which \$373,000 was paid to the class in a settlement
26 involving some 210,000 class members, resolving eleven wage and hour claims, for
27 unpaid minimum wages and overtime, waiting time penalties, deficient wage statements,
28 PAGA and other violations of the Code. The value per class member was less than \$2

each and less than 3% of the potential financial exposure sought in the Allen complaint. In 2015, the Ninth Circuit reviewed the propriety of the district court's approval of the settlement, remanding for further examination. Id. at 1220. The Ninth Circuit ultimately affirmed the district court's final approval of the settlement. Bedolla v. Allen, 736 Fed. Appx. 614, 617-618 (9th Cir. 2018). With respect to the analysis of total potential liability in relation to the amount of the proposed settlement. Plaintiffs compute the defense exposure at under \$70,000,000. Harris Decl. ¶ 17. This is around 7% of maximum possible exposure, a realistic result in this case, one riddled with procedural difficulties in securing class certification and weighty concerns about the viability of all theories of exposure, particularly in light of longstanding antipathy to workers rights and the class certification process itself. See, e.g., Viking River Cruises, Inc. v. Moriana, 142 S. Ct. 1906 (2022). This factor weighs in favor of approving the settlement

5. The Extent Of Discovery And Stage Of The Proceedings

Although the parties have not engaged in formal discovery, Plaintiffs have engaged in significant investigation into the claims in this case, including dozens of witness interviews and substantial informal discovery, including production of a large number of relevant documents and class data provided by Defendants before mediation and during the settlement negotiation. Harris Decl., ¶¶ 13-15. The Ninth Circuit has found that, “in the context of class action settlements, ‘formal discovery is not a necessary ticket to the bargaining table’ where the parties have sufficient information to make an informed decision about settlement.” Dunleavy, 213 F.3d at 459. In negotiating the Settlement Agreement, Class Counsel were provided significant informal discovery sufficient to evaluate the claims. In addition, Class Counsel undertook their own independent investigation to inform their negotiating position, including risk re-evaluation in light of the potentially dispositive defenses noted above. All told, they had sufficient information to make an informed decision about settlement. Harris Decl. ¶¶ 13-15. This factor thus weighs in favor of approval.

6. The Experience And Views Of Counsel

As reflected in the Declaration of Alan Harris filed herewith, Plaintiff's Counsel have substantial experience in prosecuting class actions, including wage-and-hour actions. Harris Decl. ¶¶ 36-39. Counsel are of the opinion that the Settlement Agreement represents an excellent bargain for the Settlement Class, given the inherent risks, hazards, and expenses of carrying the case through trial. Harris Decl. ¶¶ 19, 22, 25. As the Central District has explained, this weighs strongly in favor of approving the settlement. See Rodriguez, 2007 WL 2827379 at *9 (explaining that "the trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties").

7. The Reaction Of Settlement Class Members

The reaction of Settlement Class Members to the Settlement Agreement cannot, of course, be known until preliminary approval is given, Class Notice is delivered, and responses are received. This factor is therefore neutral at the preliminary-approval stage.

C. Plaintiffs Satisfy The FLSA Collective Action Certification Standard

The factual showing for conditional certification of a FLSA collective action is "modest." Mitchell v. Acosta Sales, LLC, 841 F. Supp. 2d 1105, 1115 (C.D. Cal. 2011). Significantly, "[b]ecause the standards for certifying an FLSA class and evaluating the fairness of an FLSA settlement are less stringent than those imposed by Rule 23," courts have found "the FLSA requisites satisfied by a showing that Rule 23 requirements have been met." Khanna v. Inter-Con Sec. Sys., Inc., 2012 WL 4465558 at *9 (E.D. Cal. Sept. 25, 2012).

D. Notice

The proposed Notice, to be sent to all by first class mail, with the Settlement Administrator using standard skip-tracing methods to secure updated mailing addresses, will satisfy due process. The proposed Notice, attached to the Settlement, is likely to reach the great majority of Class Members, individuals who are employed in the entertainment industry in Southern California, an industry in which virtually all workers are fluent in English. Settlement ¶ 21.

1 **IV. CONCLUSION**

2 The Court should grant conditional certification of the Settlement Class and
3 collective, and preliminarily approve the settlement, authorizing the appointment of a
4 settlement administrator to distribute the proposed Notice to the Settlement Class
5 Members and Aggrieved Employees.

6 DATED: September 29, 2023

HARRIS & RUBLE

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10 Alan Harris
11 *Attorneys for Plaintiffs*
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PROOF OF SERVICE

I am over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 655 North Central Avenue, 17th Floor, Glendale, California 91203. On September 29, 2023, I served the within documents:

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

DECLARATION OF ALAN HARRIS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;

DECLARATION OF WILLIAM MANN IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;

DECLARATION OF ALEX ROJAS IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;

DECLARATION OF JON KATZMAN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;

[PROPOSED] ORDER

Electronic Service: Based on a court order, I cause the above-entitled document(s) to be served through CM/ECF addressed to all parties appearing on the electronic service list for the above-entitled case and on the interested parties in this case:

Stephen L. Berry
Blake Bertagna
PAUL HASTINGS, LLP.
695 Town Center Drive, 17th Floor
Costa Mesa, CA 92626
stephenberry@paulhastings.com
blakebertagna@paulhastings.com

I declare under penalty of perjury that the above is true and correct. Executed on September 29, 2023 at Los Angeles, California.

/s/ Min Ji Gal
Min Ji Gal